

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FRANCISCO VILLANUEVA
Claimant

VS.

EXCEL CORPORATION
Respondent
Self-Insured

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Docket No. 205,928

ORDER

Claimant appeals from a preliminary hearing Order Denying Medical Treatment by Special Administrative Law Judge William F. Morrissey dated January 29, 1996.

ISSUES

Claimant requests the Appeals Board review the issue of whether notice of injury was timely given pursuant to K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds for purpose of preliminary hearing as follows:

The Appeals Board has jurisdiction to review this preliminary hearing issue pursuant to K.S.A. 44-534a.

Claimant has not established timely notice of accident pursuant to K.S.A. 44-520.

On or about August 1, 1995, claimant was employed as a chuck boner with respondent, a meat processing company. Claimant testified as follows: He experienced a specific accident where he felt a pain in his low back while pulling bone from meat. He immediately reported the injury to his supervisor and was sent to the company infirmary. Claimant testified that he completed an Employee Statement of Injury and was given treatment by the company nurse consisting of hot packs being placed on his back. Claimant was released from the infirmary to return to his job but was sent home for the day by his supervisor. He returned the next day and performed his regular job duties but received daily hotpack treatment from the company nurse. Each time he was given a

Return to Work Authorization form from the nurse which was given to the supervisor. This treatment continued for two weeks on a daily basis. On August 23, 1995 claimant was terminated from his employment with respondent for reasons unrelated to his alleged accident or physical injury.

One of the company nurses, Linda Nichols, testified concerning the respondent's procedures when an employee reports to the infirmary. A physical assessment is performed, the worker fills out an Employee Statement of Injury and then is given treatment. The treatment for a soft tissue injury such as claimant has alleged to have suffered would consist of cold packs for at least the first 72 hours. Also, treatment would be given every other day as opposed to daily. Depending upon the severity of the injury, a urinalysis may be obtained. Each time treatment is given, an authorization form is completed and given to the employee to, in turn, give to his supervisor upon his return to work. Ms. Nichols testified, in addition, a record book is maintained of every employee that is seen at the infirmary. A review of the records by Ms. Nichols disclosed no indication, whatsoever, that the claimant had ever been seen at the infirmary during 1995. He had been treated during May and June of 1994, however. Those records, including the Employee's Statement of Injury and the Return to Work Authorization forms for each treatment, were on file for the 1994 injury, but, as stated, there were none for any injury in 1995.

The Special Administrative Law Judge found that claimant had failed to give notice of injury within ten days as required. He further found that there was no just cause for such failure. He based his findings in part upon the absence of records and the inconsistent medical treatment claimant testified he received from what the company nurse testified he would have been given. Although it is possible that records could be missing for one visit to the infirmary, it is highly improbable that records would be missing for every day over a two-week period.

The Appeals Board agrees with the findings by and conclusions of the Special Administrative Law Judge and finds that his Order Denying Medical Treatment should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order Denying Medical Treatment of Special Administrative Law Judge William F. Morrissey dated January 29, 1996 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Shane Bangerter, Dodge City, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director